

David B. Chenkin, Esq.  
Tracee E. Davis, Esq.  
ZEICHNER ELLMAN & KRAUSE LLP  
575 Lexington Avenue  
New York, New York 10022  
(212) 223-0400

*Attorneys for Defendant  
Bank of America, N.A.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ORBITAL PUBLISHING GROUP, INC.,

Plaintiff,

- against -

BANK OF AMERICA, N.A.,

Defendant.

Case No.: 11 CV 3065 (PAC)

**NOTICE OF MOTION**

TAKE NOTICE, that upon the Declaration of Tracee E. Davis, dated February 2, 2012, and the exhibits thereto, the accompanying Memorandum of Points and Authorities and all pleadings and proceedings heretofore had herein, defendant Bank of America, N.A. shall make a motion before the Honorable Paul A. Crotty, at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York, for an order:

- (a) dismissing plaintiff's action with prejudice for plaintiff's lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, and
- (b) awarding defendant a default judgment on its counterclaims pursuant to Rule 55 of the Federal Rules of Civil Procedure; and
- (c) for such other and further relief as is just and proper.

TAKE FURTHER NOTICE, that opposing papers, if any, shall be served within 14 days of service.

Dated: New York, New York  
February 3, 2012

Respectfully submitted,

ZEICHNER ELLMAN & KRAUSE LLP

By: 

David B. Chenkin  
Tracee E. Davis  
Attorneys for Defendant  
Bank of America, N.A.  
575 Lexington Avenue  
New York, New York 10022  
(212) 223-0400

To: LENNON & KLEIN, P.C.  
David P. Lennon, Esq.  
Attorneys for Plaintiff  
Orbital Publishing Group, Inc.  
410 Park Avenue, 15<sup>th</sup> Floor  
New York, New York 10022